



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/577,812

04/28/2006

Emmanouil Domazakis

CFAV-5

6975

52450

7590

05/27/2009

KRIEG DEVAULT LLP  
ONE INDIANA SQUARE  
SUITE 2800  
INDIANAPOLIS, IN 46204-2079

EXAMINER

CHAWLA, JYOTI

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

05/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/577,812	<b>Applicant(s)</b> DOMAZAKIS, EMMANOUIL	
	<b>Examiner</b> JYOTI CHAWLA	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

Applicant's submission filed on March 16, 2003 has been entered as compliant. Pending claims 1-4 have been amended in the current application. Claims 1-4 are pending and examined in the current application.

### ***Information Disclosure Statement***

The information disclosure statement filed April 28, 2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. The IDS has been placed in the application file, but the information referred to therein has not been considered.

Applicant's response has been acknowledged and NPL documents have not been received by USPTO from the international authorities. Article by Bloukas was found in a search by the examiner and was cited in 892 dated 9/18/09, however NPL articles by Vural and Severini have not been found and applicant is requested to provide a copy to the office.

### ***Specification***

Applicant's response of amending the specification according to 37 CFR 1.77(b) upon indication of allowability has been noted.

### ***Claim Objections***

Claim objection for typographical error for reciting "fate" has been withdrawn based on applicant's amendment of 3/16/09.

### ***Claim Rejections - 35 USC § 112(second paragraph)***

Rejection of claims 1-4 under 35 U.S.C. 112, second paragraph, for being indefinite using parenthesis in a claim has been withdrawn based on applicant's amendments dated 3/16/09.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(A) Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloukas et al (Meat Science Vol.45, No.2, 133-144 1997) hereinafter Bloukas, in view of the combination of Domazakis (WO 02/065860) and "Sonoma sausage".

The applied reference Domazakis has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(b).

References and rejections are incorporated herein and as cited in the previous office action dated 9/18/2008.

Amendments to claim 1, do not add any new limitation as Bloukas teaches of fermented meat products and method of making them by the addition of olive oil replacing part of the animal fat (Bloukas pages 134-136). Similarly Domazakis teaches of addition of olive oil to meat based products as discussed in the previous office action dated 9/18/2008.

(B) Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloukas (Meat Science Vol.45, No.2, 133-144 1997), in view of the combination of Domazakis (WO 02/065860) and "Sonoma sausage" further in view of Gryczka et al (US 4147807), hereinafter Gryczka.

References and rejections are incorporated herein and as cited in the previous office action dated 9/18/2008.

Art Unit: 1794

Bloukas, in view of the combination of, Domazakis and Sonoma sausage teach the fermented sausage processing conditions as recited in claims 1-2 and also claims 3-4. Newly added limitations (a) through (d) of claim 3 are the same as limitations (a) through (d) of claim 1. Thus steps (a) through (d) of claim 3 have been rejected over Bloukas, in view of the combination of, Domazakis and Sonoma sausage for the same reasons of record as discussed regarding steps (a) through (d) of claim 1, above and in the previous office action dated 9/18/08.

### ***Response to Arguments***

Applicant's arguments filed 3/16/09 have been fully considered but they are not persuasive.

I) Applicant's arguments are Primarily directed at Bloukas and since the rejections of claims 1-2 are based on combination of Bloukas, Domazakis and Sonoma sausage and rejections of claims 3-4 are based on combination of Bloukas, Domazakis, Sonoma sausage and Gryczka, applicant's arguments have not been found persuasive. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that "One important feature that clearly differentiates the methods and resulting meat products of the present invention ...The Applicant has made no attempt to alter, by any means, the natural liquid states of the critical ingredients, as did Bloukas. It is the ultimate goal of the present invention to keep the natural liquid state of the critical ingredients as natural as they can be, and thus, more particularly, to protect and maintain the natural liquid state of olive oil" (emphasis added) (Remarks, page 5, last paragraph). This argument is not persuasive because as claimed the process for making fermented meat products "...comprising following steps", i.e., the process can

Art Unit: 1794

have other steps. Further, as recited, the claim states “olive oil and animal fat are added” which does not require olive oil to be in a specific form, thus as claimed olive oil can be liquid or emulsified or non-emulsified etc, contrary to applicant’s argument.

II) Further regarding applicant’s argument that Domazakis is not relevant because Domazakis teaches “cooked” meat emulsion based systems (Remarks, page 7, paragraph 3) with olive oil. In response to applicant’s argument that Domazakis teaches “cooked” meat emulsion based systems, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

III) Applicant also argues that Bloukas teaches against “fermented sausages produced by direct incorporation of olive oil” (Remarks, page 7, lines 4-6) (Emphasis added), however claims as recited do not claim “direct incorporation of olive oil”, thus applicants’ argument is not persuasive. In response to applicant’s argument that the references fail to show certain features of applicant’s invention, it is noted that the features upon which applicant relies (i.e., direct incorporation of olive oil) are not recited in the rejected claim(s).

Similarly, other arguments presented by the applicant include

“In the fermented meat producing methods of the present invention, the combined effect of emulsification and physical entrapment become the driving forces of fat incorporation” (Remarks, page 6, paragraph 2), however, “effect of emulsification and physical entrapment” have not been recited in the rejected claims.

Applicant’s argument that invention as claimed “makes no use of non-meat emulsifying agents in the present application to successfully incorporate olive oil” (Remarks, page 7, last paragraph, lines 1-2), is mute because incorporation of non-meat emulsifying agents is not precluded in the rejected process claims 1-4.

Further applicant's assertion of unexpected results by "utilization of enhanced extraction of salt soluble meat proteins (SSMP) for maximizing the retention capability of the meat mixture" (Remarks, page 8, lines 3-7) has also not been found persuasive because "enhanced extraction of salt soluble meat proteins (SSMP) for maximizing the retention capability of the meat mixture" is not recited in the rejected claims.

Therefore, it is noted that the features upon which applicant relies (as discussed above) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 9:00 am to 5:30 pm.

Art Unit: 1794

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/JC/  
Examiner  
Art Unit 1794

/KEITH D. HENDRICKS/  
Supervisory Patent Examiner, Art Unit 1794